THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.9228 of 2005

Dated 16-12-2005

Between:

Paplal.

….Petitioner

and

The Government of Andhra Pradesh, rep. by its

Principal Secretary, Hyderabad,

and four others.

….Respondents

THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.9228 of 2005

ORDER:

The petitioner claims to be a tenant in respect of 4,000 square yards of land belonging to the second respondent. It is stated that initially he was put in possession in the year 1946-1947 by virtue of an oral lease and subsequently in the year 1956-1957, the deeds were executed in his favour. While so, the fourth respondent-Deputy Commissioner of Endowments initiated suo motu proceedings under Section 75 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 17 of 1966, (for short 'the Act') for eviction of the petitioner from the land in question. Having conducted the necessary enquiry, the fourth respondent by order dated 13-04-1992 held that the petitioner was an encroacher and accordingly ordered removal of the encroachment and to handover the vacant physical possession of the property-in-question to the hereditary trustee, failing which action as provided under Section 84 (1) of the Act 30 of 1987 would be initiated. Aggrieved by the said order, the petitioner preferred a revision petition before the Regional Joint Commissioner, Hyderabad under Section 92 of the Act 30 of 1987, who though initially stayed the order of eviction pending the revision petition, ultimately by order dated 07-01-1997, dismissed the revision petition and vacated the stay. The petitioner preferred a further revision before the first respondent-Government of Andhra Pradesh, which was also dismissed on 29-03-2005 directing immediate eviction of the petitioner in accordance with the procedure prescribed under the Act 30 of 1987. Aggrieved by the said action of the respondents, this writ petition is filed.

It is to be noted that while the proceedings under Section 75 of the Act 17 of 1968 were pending before the Deputy Commissioner of Endowments, the second respondent also initiated proceedings

under Section 8(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, seeking a declaration that the petitioner is a land grabber in respect of 2,500 square yards of land situated in Survey No.4 of Mallepalli village. The said petition being L.G.C.No.78 of 1990 was dismissed by the Special Court under land grabbing prohibition Act, Hyderabad by order dated 29-04-1994 holding that the applicant has failed to establish that writ petitioner is not a tenant in respect of the scheduled land and has encroached into the land between 1986 and 1989 as alleged and therefore, he is a land grabber. Admittedly, the said order dated 29-04-1994 in L.G.C.No.78 of 190 has become final. On the basis of the said order, the petitioner contends that the finding recorded by the fourth respondent as confirmed by the Revisional Authority as well as the first respondent that the petitioner is an encroacher and therefore liable to be evicted is not sustainable. It is contended that L.G.C.No.78 of 1990 was filed by the second respondent and the same was ended in dismissal. Thus the findings recorded therein are biding on the second respondent and therefore, the order of eviction passed under the provisions of the Act 30 of 1987 cannot be acted upon. The learned counsel for the petitioner submits that though the said objection was raised before the first respondent-Revisional Authority, the same was not considered in a correct perspective.

It is to be noted that Chapter 11 of the Act 30 of 1987 deals in detail with the encroachment of the land or buildings belonging to the charitable or religious institutions, endowments and the eviction of encroachers. Explanation to 83 (1) of the Act 30 of 1987 defines the expression ‘encroacher’ as any person who unauthorisedly occupy any land or building or space and dug to enable any person who is in occupation of the land or building without approval of the competent authority sanctioning lease or mortgage. In the case on hand, the specific case of the second respondent was that two mulgies were given to the petitioner on 27-11-1957 on a monthly rent of Rs.20/- for firewood shop and another room was given on a monthly rent of Rs.10/- in the month of August, 1956. An area of 157 square yards

was given on rent to him in terms of two rental deeds and that the petitioner has encroached upon 1,833 square yards in the year 1982 and has been in illegal possession since then. It was alleged that in spite of the registered notice dated 27-01-1982, his tenancy to the portion under his illegal possession, refused to receive the same. He also evaded to receive the subsequent notices. The Deputy Commissioner of Endowments, having considered the version of the writ petitioner and having appreciated the evidence adduced both oral and documentary, recorded a finding of fact that the writ petitioner fell in arrears of rent and he has taken only one mulgi for rental purpose apart from the open land for establishment of storage of wood. It was categorically held that the area of 2000 square yards was only leased out to the writ petitioner and the remaining area which is in his occupation is illegal possession. It was held that the writ petitioner was in occupation of more area than that was leased out to him and therefore, he is an encroacher as contemplated under Section 83(1) of the Act 30 of 1987. It is not in dispute with the said finding recorded by the Deputy Commissioner of Endowments was confirmed by the Regional Joint Commissioner as well as the first respondent-Government. It is true that the second respondent has also initiated simultaneous proceedings under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, Hyderabad on the basis of the very same facts alleging that the writ petitioner grabbed the land to an extent of 2,500 square yards. The Special Court under the Andhra Pradesh Land Grabbing Prohibition Act has taken into consideration the fact that the eviction proceedings initiated by the second respondent under Section 75 Endowments Act 17 of 1966 were already pending before the Deputy Commissioner of Endowments in which the writ petitioner took a stand that he was the tenant in respect of the entire premises. However, having considered the two rental deeds dated 10-08-1956 and 27-01-1957 which was marked as Exs.A-2 and A-4, the Special Court observed that the said rental deeds were silent as to the extent of the open land and in the absence of any evidence to clinchingly establish as to the extent of the open land let out to him, the

allegation that the respondent had encroached into the scheduled property cannot be accepted. Accordingly, it was also observed that since the applicant failed to take any steps for getting the encroachment removed till 1990 when the application was filed, the relief as prayed for cannot be granted and accordingly dismissed the application.

At the outset it is to be noted that the proceedings under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and the Act 30 of 1987 are entirely distinct.

Under Section 83 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, the expressing encroacher shall mean any person who unauthorisedly occupy any land, or building or space without the approval of the competent authority sanctioning lease or mortgage. Since a finding of fact has been recorded that the pt has unauthorisedly occupied the land in question, undoubtedly he falls within the definition of encroacher under the Explanation to Section 83 (1) of the Act. In the circumstances, the proceedings initiated for eviction under the Endowments Act are maintainable and the order passed thereunder has become final. Merely because the Institution has also initiated proceedings under the A.P. Land Grabbing (Prohibition) Act, 1982 which was held against the Institution, it cannot be held that it operates as *res judicata*. As a matter of fact, the order of the Special Court under the A.P. Land Grabbing (Prohibition) Act, at Hyderabad, is superfluous and the 1st respondent has rightly ignored the same while dismissing the Revision Petition.

The Writ Petition is devoid of any merit and the same is accordingly dismissed.

(G. ROHINI, J)

Date:16-12-2005

Ghn/Kgr